White House, Archivist Held in Civil Contempt

Judge Threatens Fines Over Handling of Records

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A federal judge held the Clinton White House and the acting archivist of the United States in civil contempt yesterday for failing to protect and preserve computer records made in the Bush and Reagan administrations.

U.S. District Judge Charles R. Richey promised stiff fines starting June 21 unless the Clinton administration takes immediate action to preserve deteriorating tapes, repair those that have been damaged and issue new guidelines to protect them.

"[I]t is clear that by failing to preserve these tapes, the defendants are failing to preserve history and the lessons to be learned from it," Richey said.

Richey said he would levy fines of $50,000 a day the first week after his deadline, $100,000 a day for the second week, and $200,000 a day for the third week. He reserved decision on how to deal with any noncompliance after that.

The contempt ruling, stemming from a lawsuit first brought in 1989 as President Ronald Reagan was leaving office, was directed at the Executive Office of the President, the National Security Council and acting Archivist Trudy H. Peterson.

The litigation was initially directed against Reagan and Bush officials and archivists, but it is a continuing dispute that imposes obligations on whatever administration is in office. Richey said yesterday that the Clinton White House and its new acting archivist have failed to meet those obligations for four months now.

"It's about time the Clinton administration gets its act together and deals with these issues," said Scott Armstrong, founder of the nonprofit National Security Archive and lead plaintiff in the case.

Richey also held open the possibility of criminal contempt proceedings for destruction of some backup tapes and other lapses during the final days of the Bush administration.

The judge said in a 27-page opinion that some tapes had been found damaged after they were transferred to the Archives Jan. 19-20, and as many as 300 more must be copied immediately before they deteriorate further.

Richey held the White House and the Archives in contempt of orders he issued Jan. 6 and 11 because they failed to issue "new, appropriate and proper guidelines" for preservation of electronic "federal records" on the tapes and because some had been damaged.

Civil contempt is a remedial sanction used to obtain compliance with a court order and the threatened penalties do not kick in unless, as Richey observed, "the recalcitrant party" fails to remedy the situation.

The judge said he would give the defendants 30 days to promulgate adequate guidelines for managing electronic federal records, to demonstrate that they are being properly stored and to "take all necessary steps to preserve" the approximately 5,839 tapes transferred to the archivist.

That may be difficult to do by June 21. The tapes were transferred to the Archives under a controversial agreement giving Bush exclusive legal control of the "presidential" records on them. But depositions in the lawsuit show that the Archives does not have the equipment or the software to make copies on short order.

The lawyer for the plaintiffs, Michael Tankersley of Public Citizen, said the deteriorating tapes may have to be sent back

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to the Clinton White House which does have the facilities for copying. Although the Archives agreement with Bush would appear to preclude this, Tankersley said it contains an exception for compliance with court orders. He added that "civil contempt orders are not appealable."

White House deputy communications director Ricki Seidman said "we're disappointed by the judge's contempt citation." She said that the case was "principally about records maintenance by the Bush and Reagan administrations" and that the Clinton administration is in the process of developing a much better system.

The judge emphasized that the computer tapes at issue have already been shown to contain "valuable historical information," including information used during the Iran-contra investigations as well as records recently subpoenaed for independent counsel Joseph DiGenova's investigation of the pre-election search for information in now-President Clinton's passport files.